



October 19, 2021

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*Via ECF*

Hon. Kenneth M. Karas  
United States District Judge  
United States District Court for the  
Southern District of New York  
300 Quarropas Street, Chambers 533  
White Plains, NY 10601-4150

Re: *Ariel Dan Barkai v. Robert Nuendorf, et al.*, No. 21-CV-04060-KMK  
File No: 12129.00319

Dear Judge Karas:

We represent the defendants Officer Culianos, Lt. Cummings, Jeff Wanamaker, Ray McCullagh, and George Hoehmann (collectively, the “Clarkstown Defendants”) in this matter. We write in response to Plaintiff’s “Motion to Submit Evidence on Memorystick,” (DE #48), as directed by this Court’s October 13, 2021 order (DE #51). The Clarkstown Defendants do not object to Plaintiff’s submission of a copy of the recording, conditional upon (1) an exact copy of the recording being provided to the Clarkstown Defendants (or Plaintiff avers that the recording being provided to the Court is an exact copy of the recording previously provided to the Clarkstown Defendants), and (2) the submission of the recording does not convert the Clarkstown Defendants’ motion to dismiss to one for summary judgment. The Court should only consider the recording if it is found to be incorporated into, or integral to, the Complaint.<sup>1</sup> Additionally, the Clarkstown Defendants reserve all objections and arguments regarding the recording, including, *inter alia*, that the recording is irrelevant to the current motion to dismiss, and any objections to the authenticity or ultimate admissibility of the recording.

The Clarkstown Defendants note that Plaintiff has already submitted a purported “transcript” of the recording to the Court. (DE #24-1). Moreover, the recording that Plaintiff previously produced to the Clarkstown Defendants appears to be irrelevant to the motion to dismiss, as the majority of the alleged interaction between Plaintiff and the defendant officers is not audible on the recording,

<sup>1</sup> Plaintiff asserts in his motion that “Defendant Anthony Culianos submitted a police report as to the events of that day . . .” (DE 48 at 1). However, the Clarkstown Defendants did not newly submit the police report as part of their motion to dismiss. Plaintiff attached the police report as an exhibit to his complaint. (DE #2-1). The only exhibit to the motion to dismiss is a copy of Plaintiff’s complaint with exhibits. (DE #30).



nor is the full interaction reflected on Plaintiff's "transcript." (DE #24-1 at 3-4).

Respectfully submitted,

Wilson Elser Moskowitz Edelman & Dicker LLP

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Given Defendants' consent, and on the reasonable conditions noted herein, Plaintiff may submit the Memorystick to be considered in connection with the Motion to Dismiss.

cc: All parties via ECF

So Ordered.

*JK*

10/19/21